

Securities and Exchange Commission

§ 270.6c-7

the existing separate account to exchange their securities for securities of the new separate account without the terms of that offer having first been submitted to and approved by the Commission;

Provided, That:

(1) The exchange is to be made on the basis of the relative net asset values of the securities to be exchanged without the imposition of any fees or charges; and

(2) If the new separate account imposes a contingent deferred sales load ("sales load") on the securities to be acquired in the exchange

(i) At the time this sales load is imposed, it is calculated as if

(A) The contractowner had been a contractowner of the new separate account from the date on which he became a contractowner of the existing separate account, in the case of a sales load based on the amount of time the contractowner has been invested in the new separate account, and

(B) Amounts attributable to purchase payments made to the existing separate account had been made to the new separate account on the date on which they were made to the existing separate account, in the case of a sales load based on the amount of time purchase payments have been invested in the new separate account, and

(ii) The total sales load imposed does not exceed 9 percent of the sum of the purchase payments made to the new separate account and that portion of purchase payments made to the existing separate account attributable to the securities exchanged.

(1) Notwithstanding the foregoing, the provisions of this section will be available to a new separate account or new portfolio company, or to any affiliated person or depositor of or principal underwriter for such a new separate account, to any affiliated person of or principal underwriter for such a new portfolio company, to any affiliated person of such persons, depositor, or principal underwriters, or to any substitution of securities effected in reliance on this section, only if such new separate account or new portfolio company is registered under the Act or

such substitution is effected prior to September 21, 1983.

[47 FR 42559, Sept. 28, 1982, as amended at 67 FR 43536, June 28, 2002]

§ 270.6c-7 Exemptions from certain provisions of sections 22(e) and 27 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program.

A registered separate account, and any depositor of or underwriter for such account, shall be exempt from the provisions of sections 22(e), 27(c)(1), and 27(d) of the Act (15 U.S.C. 80a-22(e), 80a-27(c)(1), and 80a-27(d), respectively) with respect to any variable annuity contract participating in such account to the extent necessary to permit compliance with the Texas Optional Retirement Program ("Program"), *Provided*, That the separate, account, depositor, or underwriter for such account:

(a) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in each registration statement, including the prospectus, used in connection with the Program;

(b) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in any sales literature used in connection with the offer of annuity contracts to potential Program participants;

(c) Instructs salespeople who solicit Program participants to purchase annuity contracts specifically to bring the restrictions on redemption imposed by the Program to the attention of potential Program participants;

(d) Obtains from each Program participant who purchases an annuity contract in connection with the Program, prior to or at the time of such purchase, a signed statement acknowledging the restrictions on redemption imposed by the Program; and

(e) Includes in Part II of the separate account's registration statement under the Securities Act of 1933 a representation that this section is being relied upon and that the provisions of paragraphs (a) through (d) of this section have been complied with.

(Secs. 6(c) and 38(a) of the Act (15 U.S.C. 80a-6(c) and 80a-37(a), respectively))

[49 FR 1479, Jan. 12, 1984]